

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 555 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VADILAL ATMARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

MR NITIN M AMIN for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

Mr.Falgun Brahmbhatt for respondent No.2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/09/98

ORAL JUDGEMENT

1. Rule. Heard Ld.Advocate Mr.Nitin Amin for petitioner. Ld.APP Ms.B.R.Gajjar waives service on behalf of respondent No.1-State. The Ld.Advocate Falgun Brahmbhatt who has appeared in response to notice issued vide earlier order, dated 22.9.98 on behalf of respondent No.2 waives service of rule. By consent of parties petition is taken up for hearing.

2. The petitioner was prosecuted by respondent No.2 by filing Criminal Case No.3035/96 for the offence made punishable under section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act"). That vide judgment and order dated 30.5.98 passed by the Ld.Metropolitan Magistrate, Court No.9, Ahmedabad the petitioner was convicted for the said offence made punishable under Sec.138 of the Act. That the petitioner is sentenced to undergo RI for a period of 9 months and to pay fine of Rs.1,25,000/- in default to undergo SI for a period of six months.

3. The petitioner as the convict of the said case carried the matter to City Sessions Court, Ahmedabad by filing Criminal Appeal No.74/98. That during the hearing of the said appeal the parties negotiated the settlement and entire dues of Rs.1,16,420/- of the respondent No.1 was paid by the petitioner and a compromise purshis was tendered before the lower appellate court. That the parties requested the appellate court to grant permission to compound the offence as dispute between the parties was settled. However, the Ld.Addl.Sessions Judge, Court No.16, Ahmedabad City, recorded the compromise purshis and looking to the facts and circumstance of the case and in view of the compromise entered into between the parties modified the order of sentence by setting aside the sentence of imprisonment and reducing the fine imposed to the extent of Rs.1,000/- only in default to undergo SI for a period of one month. That the Ld.Addl.Sessions Judge, Court No.16, Ahmedabad observed in the order that the authority relied on behalf of the present petitioner as an appellant in the matter of M.MOHAN REDDY vs JAIRAJ D.BHALE RAO which is reported in 1996(1) Crimes 333 was not applicable to the facts inasmuch as the Sessions Court has no inherent powers like High Court to permit the parties to compound the offence while exercising the jurisdiction as an appellate court.

4. That being aggrieved and dissatisfied by the said judgment and order of the Ld.Addl.Sessions Judge, Court No.16, Ahmedabad the petitioner has preferred the present revision application.

5. Mr.Nitin Amin, Ld.advocate for petitioner has referred to and relied on the observations made by Andhra Pradesh High Court in the matter of MOHAN REDDY vs JAIRAJ D.BHALE RAO reported in 1996(1) Crimes 333 and urged that the Ld.Addl.Sessions Judge has failed to appreciate the observations made by the Andhra Pradesh

High Court in paras 8 to 11 of the said case in proper perspective. That the High Court of A.P. has observed that wrongs of certain classes which affect mainly a person in his individual capacity or character may be sufficiently redressed by compensation. Where a case has once been brought to the court and the parties have adjusted the matter between themselves lawfully, it can not be said that they are hushing up the matter. In view of the said observations the Andhra Pradesh High Court further held that in the Code of Criminal Procedure, 1973 the legislature has intentionally taken away the column regarding compounding of offences in the second schedule. That Section 320 of the Code deals with the offences only punishable under IPC and does not lay any bar or prohibition regarding compounding of offences against the other laws. That thereby it would be just and proper to permit the parties to compound the offence punishable under section 138 of the Act.

6. Mr.Nitin Amin, Ld.Advocate for petitioner has also referred to and relied on the observations made by this court in the matter of NIMESH P.PANDYA vs STATE OF GUJARAT reported in 1998(2) GCD 1529 (Guj) wherein on payment of entire dues of dishonoured cheque this court has granted permission to compound the offence under section 138 of the Act.

7. In the instant case, as Ld.advocate appearing on behalf of respondent No.2 has admitted before this court that the respondent No.2 has received the entire amount of dishonoured cheque and that the parties have resolved the dispute of outstanding dues, in my opinion, it would be in the interest of justice to permit the parties to compound the offence as per written purshis, dated 30th July, 1998 tendered in the proceedings of Criminal Appeal No.74/98 and admitted by the parties.

8. In view of the above stated discussion, petition is allowed. The order of imposing fine of Rs.1,000/- on the petitioner and in default to undergo SI for a period of one month passed by the Ld.Addl.Sessions Judge, Court No.16, Ahmedabad as well as the order of the Ld.Metropolitan Magistrate, dated 30.5.98 passed in the Criminal Case No.3035/96 convicting present petitioner under section 138 of the Act and directing the petitioner to undergo RI for 9 months and to pay Rs.1,25,000/- in default to undergo further SI for a period of six months are hereby quashed and set aside, and the petitioner is acquitted of the charge levelled against him. Fine, if any paid by the petitioner, is ordered to be refunded to the petitioner. Rule is made absolute accordingly.

